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No. 84-903

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

HUBERT WAYNE JOHNSON,
Petitioner,

v.

JOHN F. BEASLEY CONSTRUCTION COMPANY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Should the Supreme Court review the decision of the district court and the court of appeals which, consistent with established precedent and sound reasoning, held as a matter of law that an ironworker, who was injured while supervising the construction of a control house for a railroad bridge on navigable waters, was not a seaman under the Jones Act?

TABLE OF CONTENTS

	PAGE
QUESTION PRESENTED	i
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT:	
I. Introduction	8
II. Argument	
The Seventh Circuit's Decision Denying Petitioner Jones Act Seaman Status As A Matter Of Law Was Entirely Correct In That It Is Consistent With Earlier Decisions By This Court, Is In Essential Harmony With The Law In The Circuits And Expresses Sound Public Policy	8
A. The Supreme Court's Definition Of Seaman Status Focuses On Vessels And Vessel-Related Activities	9
B. The Two Principal Tests Of Seaman Status Developed By The Courts Of Appeals Implement The Supreme Court's Standard And Provide Appropriate Starting Points For Jones Act Analysis	10
C. The Test Of The Seventh Circuit Is Entirely Consistent With The Decisions Of This Court And Does Not Conflict With The Decisions Rendered By Other Courts Of Appeals	12
D. The Decision Of The Seventh Circuit Is In Every Respect Correct And Reflects Sound Public Policy	13

PAGE

E. The Supreme Court Has Not Heretofore Granted Writs Of Certiorari In Cases Of Construction Workers Claiming To Be Jones Act Seamen 15

CONCLUSION 17

TABLE OF CITATIONS

Cases

Beard v. Shell Oil Company, 606 F.2d 515 (5th Cir. 1979) 13

Bellomy v. Union Concrete Pipe Co., 297 F. Supp. 261 (S.D. W. Va. 1969), *aff'd*, 420 F.2d 1382 (4th Cir. 1970), *cert. denied*, 400 U.S. 904 (1970) 11, 16

Bennett v. Perini Corp., 510 F.2d, 114 (1st Cir. 1975) 11

Bertrand v. International Mooring & Marine, Inc., 700 F.2d 240 (5th Cir. 1983) 11

Barrios v. Engine & Gas Compressor Services, Inc., 669 F.2d 350 (5th Cir. 1982) 13

Braniff v. Jackson Avenue Gretna Ferry, Inc., 280 F.2d 523 (5th Cir. 1960) 13

Brown v. I.T.T. Rayonier, Inc., 497 F.2d 234 (5th Cir. 1974) 12

Butler v. Whiteman, 356 U.S. 271 (1958) 10, 15

Gianfala v. Texas Co., 350 U.S. 879 (1955) 10

Griffith v. Wheeling-Pittsburgh Steel Corp., 521 F.2d 31 (3rd Cir. 1975) 11, 16

Grimes v. Raymond Concrete Pile Co., 356 U.S. 252 (1958) 10

Hill v. Diamond, 311 F.2d 789 (4th Cir. 1962) 14

Holland v. Allied Structural Steel Co., Inc., 539 F.2d 475 (5th Cir. 1976), *cert. denied*, 429 U.S. 1105 (1977) 11, 15

PAGE

International Stevedoring Co. v. Haverty, 272 U.S. 50 (1926) 9

Lawrence v. Norfolk Dredging Company, 319 F.2d 805 (4th Cir. 1963) 13

Longmire v. Sea Drilling Corp., 610 F.2d 1342 (5th Cir. 1980) 11

Lynn v. Heyl and Patterson, Inc., 483 F. Supp. 1247 (W.D. Pa. 1980), *aff'd*, 636 F.2d 1209 (3rd Cir. 1980) 11

McDermott, Inc. v. Boudreaux, 679 F.2d 452 (5th Cir. 1982) 11

Mellon v. John F. Beasley Construction Company, 661 F.2d 924 (4th Cir. 1981), *cert. denied,* 454 U.S. 1033 (1981) 11, 15

Norton v. Warner Co., 321 U.S. 560 (1944) 9, 10, 13

Offshore Co. v. Robison, 266 F.2d 769 (5th Cir. 1959) 10, 13

Owens v. Diamond M. Drilling Company, 487 F.2d 74 (5th Cir. 1973) 13

Producers Drilling Company v. Gray, 361 F.2d 432 (5th Cir. 1966) 13

Rotolo v. Halliburton Company, 317 F.2d 9 (5th Cir. 1963) 13

Senko v. LaCrosse Dredging Corp., 352 U.S. 370 (1957) 9, 10, 13

South Chicago Coal & Dock Company v. Bassett, 309 U.S. 251 (1940) 9, 10, 13

Swanson v. Marra Brothers, Inc., 328 U.S. 1 (1946) 9

Thibodeaux v. J. Ray McDermott & Co., 276 F.2d 42, 47 (5th Cir. 1960) 14

Whittington v. Sewer Construction Co., 541 F.2d 427 (4th Cir. 1976) 11

PAGE

Wilkes v. Mississippi River Sand & Gravel Co., 202 F.2d 383 (6th Cir. 1953) 10

Statutes

Jones Act, 46 U.S.C. § 688 ..... 8, 9, 15

Longshoremen's and Harbor Workers' Compensation Act, 33 U.S.C. §§ 901 *et seq.* 9, 13

Outer Continental Shelf Lands Act, 43 U.S.C. § 1333(b) 13, 15

Other Authorities

Gilmore & Black, The Law of Admiralty, p. 281 (2nd Ed. 1975) 14

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BRIEF FOR RESPONDENT IN OPPOSITION

STATEMENT OF THE CASE

The Respondent does not dispute the portions of the Statement of the Case of the Petitioner which pertain to the proceedings in the district court and the court of appeals. However, the Petitioner's description of the circumstances surrounding his accident omits many undisputed, yet material, facts contained in the record, which are essential to convey to the Court the full flavor of his activities both prior to and at the time of his injury.

Moreover, the petitioner has, from the inception of the litigation, attempted to put a maritime gloss on a construction accident by insisting that he was the victim of a collision between vessels on navigable waters that calls for Jones Act application. Accordingly, the Respondent submits the following statement of facts which more fully and accurately describes the status of the Petitioner during the course of his employment by it. This statement is, in somewhat abbreviated form, the same on which the Respondent relied in the courts below. It is based entirely on the Petitioner's own testimony on deposition, as well as on the Respondent's construction records, explained in an affidavit by its superintendent.

The Petitioner was injured on July 13, 1981, while employed by the Respondent as a foreman on a job involving the construction/modification of the Illinois Central Gulf Railroad Bridge over the Illinois River near Pearl, Illinois. He had worked for the Respondent off and on since graduation from high school in 1962 and more or less steadily since 1971. He had been on many of the Respondent's construction projects both on land and above navigable waters. His only union affiliation was with the International Association of Bridge, Structural and Ornamental Iron Workers. Specifically, he had never belonged to any seaman's or maritime union and held no licenses issued by the U.S. Coast Guard or any other governmental agency.

The Respondent engages in the erection of steel in connection with multi-story structures such as office buildings, bridges, industrial developments, power stations, industrial smoke stacks and antenna towers. On the job at Pearl, the Respondent was a subcontractor to Vincennes Steel Corporation. Vincennes, in turn, was a subcontractor to the general contractor, Massman Construction Company, having agreed to fabricate and erect the steel. The erection portion Vincennes had subcontracted to the Respondent.

James McGraw was the superintendent on the construction site overseeing all aspects of the Respondent's performance of the subcontract. Directly under him was Norman J. Cantrell, the general foreman, who directly supervised the activities of a number of construction gangs in the field, each headed by an ironworker foreman. The Petitioner was one of these foremen. His gang was essentially a raising gang, consisting of several ironworkers acting as hook-on men at ground level and connectors on top of the bridge, as well as an operator and an oiler for a crane which supplied the main lifting power for the gang.

The Respondent employed three trades on the job site. There were ironworkers, whose primary function was the actual raising of the iron and its assembling and securing on the bridge. There were also members of the operating engineers' union, which provided operators and oilers for the hoisting cranes or derricks, as well as for the tugs and work boats used on the job. Finally, there were general laborers who made up the unskilled work force and also acted as deckhands on the tugs and work boats used in the movement of personnel and of various barges. The operators of the tugs and work boats and the deckhands assigned to each performed the actual maritime chores at the construction site. These chores consisted of such things as attending barges during movement, acting as look-out, "facing up", mooring, checking the winches holding the barges to the tug, setting lights, and doing general maintenance. Although the Respondent cannot dispute that on occasion the Petitioner and his fellow ironworkers may have handled a mooring line, such activity was at best incidental and subservient to their bridge-building activities. It specifically denies the conclusory statement on page 9 of the Petition "that the Defendant admits Plaintiff performed some traditional navigational functions."

Because the bridge alteration took place some distance above the water surface, the Respondent employed three floating derricks, one of which was called the 3900. The 3900 consisted of a steel flat-deck barge, denominated the JFB-15, upon which had been placed a rented Manitowoc crawler crane. The JFB-15 measured 135 feet by 40 feet by 8 feet and displaced 405 tons. It had been constructed for the Respondent to be used primarily as a construction platform. It had raked ends and was subdivided into six watertight compartments which could be separately ballasted to allow changes in its trim, list or draft/ freeboard. It had none of the features usually found in a vessel: it had no engines, no shaft, no propeller, no helm or rudder, no kitchen or galley, no permanent toilet facilities, and no permanent navigation lights. There were no day or night accommodations, and drinking water and food had to be carried on from shore. Neither the Petitioner nor, for that matter, anyone else ever slept on the barge, and at quitting time, he and the members of his gang would be taken ashore by boat. The Petitioner, incidentally, lived with his family in rented quarters in Pittsfield, Illinois, some 20 to 25 miles from Pearl and commuted to the construction site every workday by automobile.

The JFB-15 was brought to the job site on or about June 29, 1981, for a dual purpose: assembly of a control house for the bridge on the deck of the barge itself, and construction of the truss of the lift span on top of falsework — tall, tower-like steel braces set upon pilings which had been driven into the river bottom on the west bank of the Illinois River.

The principal reason for the entire bridge project was to improve the navigability of the Illinois River. The existing bridge had a center swing span resting on a pier-supported turn table, which, by its very nature, created an obstruction in the center of the navigation channel. The Respondent's contract called for the removal of the swing

span and replacing it with a lift span, thereby removing the obstruction in the river. Because the channel of the river had to remain open to navigation during the time the lift span was under construction, the latter had to be assembled on the west bank of the river on falsework downstream from the bridge crossing. The lift span truss was some 420 long and weighed approximately 1100 tons. Following its construction, the lift span was to be floated into the gap left by the removal of the swing span and then maneuvered into place. Construction of the control house and the lift span truss was the task assigned to the Petitioner and his gang, using the 3900 to provide the hoisting capability.

The Respondent's records reveal, in the language of the construction trade, the Petitioner's activities on each day from the time he assumed his duties as ironworker foreman on the construction site on Monday, June 29, 1981, until his injury on July 13, 1981, at about 2:00 p.m. On the 29th of June, 1981, he worked with his gang utilizing the 9299, another crane on the construction site, "rolling in and out", *i.e.*, removing two simple spans immediately adjacent to the swing span and replacing them with foundations of two steel towers which were to support the new lift span. This work continued on June 30, 1981, with the same equipment. On July 1, 1981, the Petitioner's gang worked 23 hours, once again rolling in and out. All of this work was performed on top of the bridge piers using the crane moored in the river as a supporting tool. On Thursday, July 2, 1981, the Petitioner's gang unloaded iron into barges. The hoisting equipment utilized that day is not identified.

No work took place on the construction site during the period of July 3-5 because of the long Fourth of July weekend. On Monday, July 6, 1981, the records reveal the Petitioner's gang unloading iron with the 3900. That rig had arrived on the work site on June 29, 1981, but had not

gone into action prior to July 6, 1981. The iron being unloaded was to be used in the construction of the control house for the lift span.

On July 7 and 8, the erection of the control house continued, and on those days the rig was tied to falsework on the west bank. However, construction had to be interrupted on July 9, 1981, when, because of ever-rising water levels, it became apparent that further unloading of iron for the bridge construction from trucks was no longer possible at Pearl. Mr. McGraw learned of a ferry crossing 14 miles south of the construction site at Kampsville, Illinois, where trucks could still be brought near enough to the river bank to be reached by the boom of one of the Respondent's cranes. Because the other rigs were being used in dismantling the approach spans of the bridge, Mr. McGraw decided to use the 3900, and he gave orders for it to be pushed downstream by the Beasley Tug IRON WORKER.

Mr. McGraw himself rode the rig down-river to the ferry crossing. This trip took some two and one half hours, during which the Petitioner and the members of his gang fulfilled no navigational tasks. When the JFB-15, with the 3900 secured to its deck, arrived at Kampsville, one or more lines were run from the barge to the shore. The deckhand of the tug and some of the ironworkers did assist in that task. Subsequently, while awaiting the arrival of the first materials trucks, the ironworkers prepared their tools and lifting equipment.

The unloading operation was not finished on July 9, and it was therefore necessary to send a company truck to Kampsville to get the Petitioner and his men back to Pearl. The unloading operation continued and was completed on July 10, 1981. While the two loaded hopper barges were left at the ferry crossing to be picked up after the weekend, the tugboat brought the 3900 back to Pearl,

where it was secured to falsework on the west bank of the river. The Respondent's records suggest that the Petitioner left Kampsville over the road, rather than returning by water; however, contrary to the Petitioner's records and the recollection of Mr. McGraw, who made the return trip on the tug, the Petitioner claims that he stayed with the 3900 during the return trip to Pearl. Even if that is correct, however, his own testimony shows that his concern was not the navigation of the flotilla, but the preparation of the iron for raising.

On Monday, July 13, 1981, following a safety meeting, the Petitioner and his men returned to the JFB-15 in order to resume construction of the control house. The accident happened at about 2:00 p.m., while the Petitioner was standing on the deck of the barge between the 3900 and the almost completed control house. He was speaking to one of the men in his gang about a structural member of the control house that evidently had not been properly fitted. In the immediate vicinity, there was lying on the deck a net beam measuring 30 feet by 12 inches and weighing close to 2,000 pounds which apparently was protruding some distance over the off-shore side of the JFB-15. At the same time, the Tug IRON WORKER was bringing the two materials barges, which had previously been loaded and left at the Kampsville ferry crossing, abreast of the JFB-15. In the process, the forward portside corner of the lead barge snagged the net beam and moved it across the deck. It came to rest against the timberhead (a type of bollard) on the offshore side of the JFB-15, with the result that it pivoted, catching the Petitioner's left foot and injuring him.

REASONS FOR DENYING THE WRIT

I.

INTRODUCTION

This case involves yet another attempt by an ironworker building a structure on or over navigable waters to bring himself within the coverage of the Jones Act, as distinguished from compensation remedies available to him under applicable federal and/or state statutes, by contending that he was a seaman. After a careful examination of the Statute and the cases decided thereunder both by this Court and several courts of appeals, and after reviewing the facts in the light most favorable to the Petitioner, the United States District Court for the Central District of Illinois and the United States Court of Appeals for the Seventh Circuit held, as a matter of law, that the Petitioner was not a seaman. The decision of the Seventh Circuit is not in conflict with any decision of this Court or any of the courts of appeals and properly reflects public policy. There are no important reasons for hearing this case. Accordingly, the Respondent respectfully requests that this Court deny the Petition for Writ of Certiorari.

II.

ARGUMENT

THE SEVENTH CIRCUIT'S DECISION DENYING PETITIONER JONES ACT SEAMAN STATUS AS A MATTER OF LAW WAS ENTIRELY CORRECT IN THAT IT IS CONSISTENT WITH EARLIER DECISIONS BY THIS COURT, IS IN ESSENTIAL HARMONY WITH THE LAW IN THE CIRCUITS AND EXPRESSES SOUND PUBLIC POLICY.

The Petitioner contends that the Seventh Circuit created a new test to determine seaman status which is not only ambiguous and confusing, but contradicts precedent set by this Court and is also in conflict with decisions

by other courts of appeals. Nothing could be further from the truth!

A. The Supreme Court's Definition Of Seaman Status Focuses On Vessels And Vessel-Related Activities.

While the Jones Act, 46 U.S.C. § 688, does not define the word "seaman", this Court first made it clear in *Swanson v. Marra Brothers, Inc.*, 328 U.S. 1 (1946), and later affirmed in *Senko v. LaCrosse Dredging Corp.*, 352 U.S. 370 (1957), that it is synonymous with "member of the crew of any vessel", the wording of the exception to coverage under the Longshoremen's and Harbor Workers' Compensation Act ("LHWCA"), 33 U.S.C. §§ 901 *et seq.* Thus, after some initial doubt expressed in *International Stevedoring Co. v. Haverty,* 272 U.S. 50 (1926), it was held that those engaged in maritime employment are divided into two distinct groups, seamen and harborworkers, with separate statutory schemes to protect each.

Even before *Swanson v. Marra Brothers, Inc., supra,* this Court rendered two decisions which draw the line between "seamen" on the one hand, and "harborworkers" on the other. In *South Chicago Coal & Dock Company v. Bassett,* 309 U.S. 251 (1940), it was held that a seaman is someone who is on the vessel naturally and primarily to aid in her navigation. Soon afterwards, in *Norton v. Warner Co.,* 321 U.S. 560 (1944), the Court, fearful perhaps that the *South Chicago Coal* definition might be construed too narrowly by the lower courts, explained that "aiding in navigation" was not confined to "putting over the helm" or to "handing, reefing and steering", but embraced duties essential for other purposes of the vessel. Thus, it can no longer be seriously doubted that, for instance on a passenger vessel, seamen are not only those who navigate, tend deck or operate the engines, but also those who work in the catering and steward departments.

Since the *Norton* decision in 1944, this Court has been called upon on four other occasions to decide whether or not a claimant, as a matter of law, should be accorded seaman status: *Gianfala v. Texas Co.*, 350 U.S. 879 (1955); *Senko v. LaCrosse Dredging Corp., supra; Grimes v. Raymond Concrete Pile Co.*, 356 U.S. 252 (1958); and *Butler v. Whiteman*, 356 U.S. 271 (1958). Of these cases, however, only *Senko* sheds any light on this Court's reasoning. There, it was held that it was for the jury to decide whether a deckhand on a dredge was a seaman, where his primary job was to load, unload and maintain the dredge, where he was employed almost solely on the dredge, where he was to have significant navigational functions on the dredge once it got underway, and where he was injured while performing a task beneficial to the dredge.

B. The Two Principal Tests Of Seaman Status Developed And Presently Used By The Courts Of Appeals Implement The Supreme Court's Standard And Provide Appropriate Starting Points For Jones Act Analysis.

The various courts of appeals have taken the parameters laid down by the Supreme Court and forged them into two basic tests. After *South Chicago Coal* and *Norton, supra,* but before *Gianfala, Senko, Grimes* and *Butler, supra,* the Sixth Circuit, in *Wilkes v. Mississippi River Sand & Gravel Co.*, 202 F.2d 383 (6th Cir. 1953), developed a three-prong test that was described by the Seventh Circuit in its opinion below as "the touchstone of Jones Act analysis": (1) that the vessel be in navigation; (2) that the worker have a more or less permanent connection with the vessel; and (3) that he be aboard primarily to aid in navigation. Shortly after the *Butler* decision in 1958, the Fifth Circuit, in a further attempt to get a handle on the concept of seaman status, in *Offshore Co. v. Robison*, 266 F.2d 769 (5th Cir. 1959), developed a two-prong test evidently intended to refine the *Wilkes* test and to reflect the decisional law of the day: (1) that the

injured worker be assigned permanently to a vessel (including special purpose structures not normally thought of as vessels, in obvious deference to new types of craft coming into common use in the developing off-shore industry) or performed a substantial part of his work on the vessel; and (2) that the injured worker perform in a capacity contributing to the function of the vessel or to the accomplishment of its mission, or to the operation or welfare of the vessel in terms of its maintenance during its movements or anchorage for its future trips.

Both of these tests remain in use today, not only to determine whether a case should go to the jury, but also to be used "in delimiting the power of the factfinder to deny or confer seaman's status." *McDermott, Inc. v. Boudreaux,* 679 F.2d 452, 457 (5th Cir. 1982). In the past, the Third and Fourth Circuits have applied the three-prong test of *Wilkes,* whereas the First and Fifth Circuits have applied the *Robison* test. In addition, the Fifth Circuit has occasionally used a variation in which the first two elements of the three-prong *Wilkes* test are addressed in conjunction with the last element of the *Robison* test. *See Bertrand v. International Mooring & Marine, Inc.,* 700 F.2d 240 (5th Cir. 1983).[1] Whichever of the tests is used,

[1] Construction worker cases from these Circuits have denied Jones Act status as a matter of law. *See Griffith v. Wheeling-Pittsburgh Steel Corp.,* 521 F.2d 31 (3rd Cir. 1975), *cert. denied,* 413 U.S. 1054 (1976); *Lynn v. Heyl and Patterson, Inc.,* 483 F. Supp. 1247 (W.D. Pa. 1980), *aff'd,* 636 F.2d 1209 (3rd Cir. 1980); *Mellon v. John F. Beasley Construction Company,* 661 F.2d 924 (4th Cir. 1981), *cert. denied,* 454 U.S. 1033 (1981); *Whittington v. Sewer Construction Co., Inc.,* 541 F.2d 427 (4th Cir. 1976); *Bellomy v. Union Concrete Pipe Co.,* 297 F. Supp. 261 (S.D. W.Va. 1969), *aff'd,* 420 F.2d 1382 (4th Cir. 1970), *cert. denied,* 400 U.S. 904 (1970); *Longmire v. Sea Drilling Corp.,* 610 F.2d 1342 (5th Cir. 1980); *Holland v. Allied Structural Steel Co., Inc.,* 539 F.2d 475 (5th Cir. 1976), *cert. denied,* 429 U.S. 1105 (1977). Only *Bennett v. Perini Corp.,* 510 F.2d 114 (1st Cir. 1975), has held that Jones Act status is a question of fact to be decided by the jury.

however, it is clear that they are not "the law", but, as the Fifth Circuit itself has pointed out in *Brown v. I.T.T. Rayonier, Inc.*, 497 F.2d 234, 237 (5th Cir. 1974), "an analytical starting point rather than a self-executing formula."

C. The Test Of The Seventh Circuit Is Entirely Consistent With The Decisions Of This Court And Does Not Conflict With The Decisions Rendered By Other Courts Of Appeals.

Judge Wood, the author of the Seventh Circuit's opinion below,[2] noted initially that his court had not been called upon frequently to decide disputes involving Jones Act status. Consequently, he commendably availed himself of the opportunity to lend his considerable analytical skills to examine the law "from the grass roots up". He noted approvingly that the district judge, in deciding that the Petitioner was not a Jones Act seaman as a matter of law, had applied the three-prong *Wilkes* test, but he also described the *Robison* test as a "sound starting point in most respects", his reservation obviously stemming from the lack of mathematical clarity of terms such as "function of the vessel" or "accomplishment of its mission" contained therein. Judge Wood concluded that more precise meanings would have to be found for these categories to render them useful, lest everyone working on water should claim seaman status, with the result that the judicial clock be turned back to pre-*Swanson* days. He found that practically all vessels, regardless how specialized, are designed to carry personnel, materials or equipment over navigable waters, *i.e.* have a transportation function, and concluded that only those who are on board to aid that function are

[2] 742 F.2d 1054

seamen entitled to Jones Act protection. All others are either longshoremen and harbor workers or off-shore workers entitled to the increasingly generous benefits of federal statutes, such as the LHWCA or the Outer Continental Shelf Lands Act ("OCSLA"), 43 U.S.C. § 1333(b), or they are land-based workers protected by the workers' compensation statutes of the coastal states. Legal support for that analysis came from this Court's decisions in *South Chicago Coal, Norton* and *Senko, supra.* Thus, the Seventh Circuit's emphasis on the vessel's transportation function is by no means a new test, but simply a re-examination of existing standards, yielding a component rendering them easier of application and, as a result, making them more useful, all fully consistent with the pronouncements by this Court.

D. The Decision Of The Seventh Circuit Is In Every Respect Correct And Reflects Sound Public Policy.

1. *No jury question was presented.*

Frequently, the determination whether an injured worker is a Jones Act seaman is a mixed question of law and fact, and where material facts are in dispute, the resolution must ordinarily be made by the trier of fact, after all the evidence has been examined. *Offshore Co. v. Robison, supra; Braniff v. Jackson Avenue Gretna Ferry, Inc.,* 280 F.2d 523 (5th Cir. 1960). Where, however, as in this case, the material facts are undisputed and only one rational inference can be drawn from the evidence, it was incumbent on the lower courts to resolve the question as a matter of law. *Barrios v. Engine & Gas Compressor Services, Inc.,* 669 F.2d 350 (5th Cir. 1982); *Beard v. Shell Oil Company,* 606 F.2d 515 (5th Cir. 1979); *Owens v. Diamond M. Drilling Company,* 487 F.2d 84 (5th Cir. 1973); *Producers Drilling Company v. Gray,* 361 F.2d 432 (5th Cir. 1966); *Lawrence v. Norfolk Dredging Company,* 319 F.2d 805 (4th Cir. 1963); *Rotolo v. Halliburton*

Company, 317 F.2d 9 (5th Cir. 1963); and *Hill v. Diamond*, 311 F.2d 789 (4th Cir. 1962). Not even under the most liberal construction of any of the tests used by the courts to determine seaman status can the Petitioner claim Jones Act coverage: he was an ironworker foreman assigned the task of assembling the component parts of a bridge, an activity which was carried out on a floating work platform for the sake of efficiency, but could have been carried out equally well on dry land without changing the hazards concomitant with heavy construction work. Instead of by an approaching barge, the net beam that pinned Petitioner's foot could have been as easily snagged by a moving truck. If it was the mission of the JFB-15 to support the construction activity, then the Petitioner, as the very perpetrator of that activity, did nothing to support that mission; rather, that support was rendered by the workers manning the tugs and workboats at the construction site, who were given responsibility for the moving and maintaining of the Respondent's floating equipment. The Petitioner's occasional throwing of a mooring line provided, as the Fifth Circuit said in *Thibodeaux v. J. Ray McDermott & Co.*, 276 F.2d 42, 47 (5th Cir. 1960), "insufficient legal buoyance to float a seaman status".

2. *Considering the manner in which the law has developed in recent years, maritime construction workers do not require Jones Act protection.*

The Federal Courts have long considered "poor and friendless" seamen "wards of the admiralty". Gilmore & Black, *The Law of Admiralty*, p. 281 (2nd Ed. 1975). When the oil industry first expanded its activities from dry land to the ocean floor, there was perhaps justification for the postulation of broader Jones Act coverage, lest newly created categories of workers, which were not otherwise protected, "fall between the cracks". Yet, as Judge Wood has pointed out, that situation, if in fact it ever existed,

has drastically changed with the passage of such statutes as the OCSLA and the coverage of accidents in coastal waters now afforded by the compensation statutes of the littoral states.

3. *The Petitioner's desire for greater financial reward does not constitute sufficient reason to grant him Jones Act status.*

Although one might sympathize with the victim of a serious accident attempting to improve his financial lot by breaking the restraints of compensation coverage in favor of the limitless coverage of the Jones Act, the employer, initially, and society, ultimately, would be called upon to pay an inordinate price, either through lack of insurance cover or, conversely, unnecessary multiple layers of insurance, if an ironworker engaged in a bridge building activity, who has been traditionally covered by workers' compensation, succeeds in having himself declared a Jones Act seaman, or being even permitted to have that question determined by a jury. Failure to resolve that question in the employer's favor as a matter of law, except in decidedly grey areas, would, as Judge Wood put it, "[distort] the purpose of the Jones Act."

E. The Supreme Court Has Not Heretofore Granted Writs Of Certiorari In Cases Of Construction Workers Claiming To Be Jones Act Seamen.

Since its *Butler* decision in 1958, this Court has been called upon on numerous occasions to grant review of decisions by the various courts of appeals holding in each instance that the appellant is not a Jones Act seaman as a matter of law. Some of these cases involve, as the instant case, workers building structures on or above navigable waters. *Mellon v. John F. Beasley Construction Company*, 661 F.2d 924 (4th Cir. 1981), *cert. denied*, 454 U.S. 1033 (1981); *Holland v. Allied Structural Steel Co., Inc.*, 539

F.2d 475 (5th Cir. 1976), *cert. denied,* 429 U.S. 1105 (1977); *Griffith v. Wheeling-Pittsburgh Steel Corp.,* 521 F.2d 31 (3rd Cir. 1975), *cert. denied,* 423 U.S. 1054 (1976); and *Bellomy v. Union Concrete Pipe Co.,* 297 F. Supp. 261 (S.D. W.Va. 1969), *aff'd,* 420 F.2d 1382 (4th Cir.), *cert. denied,* 400 U.S. 904 (1970). Although the Court's reasons for denying the writ in each of these cases are not stated and, therefore, unknown, one may presume that the Court is satisfied that the guidelines laid down by it in earlier decisions are heeded by the lower courts, and that the tests developed by them in response thereto are generally producing fair and equitable results. No doubt, yet another definition of "seaman" could be devised, but as with any verbalization of human thought, it may well create as many problems as it solves.

CONCLUSION

The holding of the district court and the Seventh Circuit that the Petitioner, an ironworker injured on a floating work platform held to have been a vessel in navigation by the Seventh Circuit, while supervising the construction of a component part of a bridge, and even prior to his accident having engaged in no vessel-related activities other than throwing an occasional mooring line, was not a Jones Act seaman, was entirely correct and in harmony with the intent of the Statute, as well as the decisional law of this Court and the various courts of appeals.

Accordingly, the Petition for Writ of Certiorari should be denied.

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